

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: GOEBEL PUMPING SERVICE, L.C. Bremer County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2015-AFO-11
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TO: John Goebel
Goebel Pumping Service, LC
2352 110th Avenue
Masonville, Iowa 50654

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Goebel Pumping Service, L.C. (Goebel Pumping) for the purpose of resolving manure application violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Chris Gelner, Field Office 1
Iowa Department of Natural Resources
909 West Main Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Cob Rollers Pork, LLC (Cob Rollers) is an animal feeding operation located at 2520 Oakland Avenue, Denver, Iowa (NE ¼ of Section 20, Maxfield Township, Bremer County). The facility consists of two 2,400 head swine finisher confinement buildings with a total of 1,920 animal units.

2. On December 8, 2014, DNR Field Office 1 received a complaint stating that manure from Cob Rollers had been applied between December 3-4, 2014 to fields in Sections 18 and 19 of Maxfield Township, Bremer County, and the proper separation distances had not been met from four residences and a church.

3. On December 9, 2014, Chris Gelner, DNR Field Office 1 environmental specialist, investigated the complaint and found that the surface application of liquid manure had recently occurred in both Section 18 and Section 19. Mr. Gelner determined that the application was done in violation of separation distance requirements from five residences (126 feet, 135 feet, 130 feet, 300 feet, and 645 feet), one church (135 feet), one public use area (cemetery) (240 feet), two water sources (45 feet and <50 feet) and at least one drinking well (<50 feet). The manure had not been incorporated.

4. Mr. Gelner went to the Cob Rollers facility and spoke to Nancy Folkman who stated Mr. Gelner should speak to Steve Rathe, who handles all manure management. Ms. Folkman stated that Dan Goebel with Goebel Pumping had done the manure application and she was under the impression that the manure had been incorporated.

5. Mr. Gelner attempted to contact Mr. Goebel but was unable to talk to Mr. Goebel. Mr. Goebel later contacted DNR Field Office 1 and stated he had stayed two telephone poles away from the homes.

6. On December 18, 2014, a Notice of Violation letter was issued to Goebel Pumping for the violations discovered by the field office. The letter stated the matter was being referred for further enforcement.

7. Goebel Pumping was issued an administrative order in 2002 for recordkeeping violations, failure to report a release, and an uncertified applicator. The \$2,000.00 penalty was paid.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

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2. 567 IAC 65.3(3)"a" states the required separation distance for liquid manure application from a confinement feeding operation from a residence not owned by the titleholder, a business, a church, a school or a public use area is 750 feet. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school or public use area. During the investigation on December 8, 2014, DNR Field Office 1 personnel determined that Goebel Pumping had not complied with the separation distance requirements from five residences, one church and one public use area. The above-mentioned facts indicate violations of this provision.

3. 567 IAC 65.3(3)"g" states a person shall not apply manure on land within 200 feet from a designated area unless one of the following applies: 1) the manure is land-applied by injection or incorporation on the same date the manure was land-applied or 2) an area of permanent vegetation cover exists for 50 feet surrounding the designated area. 567 IAC 65.1 defines designated area as a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. During the investigation on December 8, 2014, DNR Field Office 1 personnel determined that Goebel Pumping had not complied with the separation distance requirements from two water sources and at least one drinking water well. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Goebel Pumping agrees to do the following:

1. Goebel Pumping shall pay an administrative penalty in the amount of \$3,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an

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administrative penalty of \$3,500.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Goebel Pumping gained an economic benefit by avoiding the costs associated with proper manure incorporation. This amount is estimated to be \$500.00. Based on the above-factors, \$500.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The potential for a water quality violation resulted from the manure not being incorporated at the time of application. Separation distance requirements are established to ensure the protection of personal property and natural resources. Goebel Pumping’s failure to comply with the separation distance requirements threatens the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Goebel Pumping has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Goebel Pumping. For that reason Goebel Pumping waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
April, 2015.

Bail Goebel - Comptroller
Goebel Pumping Services, L.C.

Dated this 10th day of
April, 2015.

Kelli Book, Field Office #1, EPA, VIII.D.2.b

RECEIVED

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IDNR AIR QUALITY

